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and Other Cruel, Inhuman
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or Punishment

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COMMITTEE AGAINST TORTURE

Sixteenth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 254th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 6 May 1996, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.254/Add.1

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of China (continued) (CAT/C/20/Add.5)

1. At the invitation of the Chairman, the delegation of China took places at the Committee table.

2. Mr. BURNS (Country Rapporteur) read out the conclusions and recommendations of the Committee on the second periodic report of China:

"Conclusions and recommendations of the Committee against Torture

CHINA

The Committee considered the second periodic report of China (CAT/C/20/Add.5) at its 251st and 252nd meetings, on 3 May 1996 (see CAT/C/SR.251 and 252) and adopted the following conclusions and recommendations:

A. Introduction

The second periodic report of China, dated 15 February 1996, was due on 2 November 1993 but, since China had presented a supplementary report dated October 1992, the timing of this report is quite satisfactory to the Committee against Torture. The second periodic report of China follows the Committee's guidelines and meets them satisfactorily. The Committee also thanks Ambassador Wu Jianmin for his most enlightening verbal introduction to the report and for the way in which he and his delegation responded so constructively to the questions asked.

B. Positive Aspects

1. The reforms contained in the amendments to the Criminal Procedure Law to take effect in 1997 are an important step towards developing the rule of law in China, and towards that country being able to meet its obligations pursuant to the Convention against Torture.

2. There are instances reported of police officials being prosecuted and convicted for acts of torture in China, including Tibet.

3. The various steps taken by the Ministry of Public Security, pursuant to its notice of January 1992, to educate personnel on the prohibition on torture are welcome.

4. The provision of effective administrative and criminal compensation to victims of abuse is a most welcome development.

5. The Committee notes with pleasure the response of the Ambassador that 'heads of cells and trusties' in prisons, as alleged by some non-governmental organizations do not exist in China.

C. Factors and difficulties impeding the application of the provisions of the Convention

The sheer size of the task confronting China in policing and administering a huge land mass with 1.2 billion people at a time of economic and social reconstruction.

D. Subjects of concern

1. The Committee is concerned that, according to information supplied by non-governmental organizations, torture may be practised on a widespread basis in China.

2. The failure to incorporate a crime of torture into the domestic legal system in terms consistent with the definition in article 1 of the Convention.

3. The allegations drawn to the attention of the Committee by non-governmental organizations that torture occurs in China in police stations and prisons in circumstances that often do not result in investigation and proper resolution by the authorities.

4. The assertions by some non-governmental organizations that the Procuratorate has yet to establish its authority over the police, security and prison services when dealing with allegations of torture and maltreatment.

5. Some methods of capital punishment may be a breach of article 16 of the Convention.

6. The assertions by non-governmental organizations that the special environment that exists in Tibet continues to create conditions that have resulted in the alleged ill-treatment and even death of persons held in police custody and in prisons.

7. The failure to provide access to legal counsel to persons at the earliest time of their contact with the authorities. Some non-governmental organizations have alleged that incommunicado detention is still prevalent in China.

8. Finally, the number of deaths reported to the Committee apparently arising out of police custody is of concern to the Committee.

E. Recommendations

1. That China enact a crime of torture in terms consistent with article 1 of the Convention against Torture.

2. That a comprehensive system be established to review, investigate, and effectively deal with complaints of ill treatment by those in custody.

of every sort. If the Procuratorate is the body, it should be given the necessary jurisdiction to carry out its functions even over the objections of the organ that it is investigating.

3. Methods of execution of prisoners sentenced to death should be brought into conformity with article 16 of the Convention against Torture.

4. Conditions in prison should be brought into conformity with article 16 of the Convention against Torture.

5. Access to legal counsel should be granted to all those detained, arrested or imprisoned as a matter of right and at the earliest stage of the process. Access to the family and to a medical doctor should also be accommodated.

6. China is invited to consider cooperating with the Rehabilitation Centre for Torture Victims in setting up a torture victims rehabilitation centre in Beijing or some other large centre in that country.

7. China should continue with its most welcome reforms to its Criminal Procedure law and continue to train its law-enforcement personnel, procurators, judges and doctors to become professionals of the highest standing.

8. China is invited to consider withdrawing its reservations to article 20 and making declarations under articles 21 and 22 of the Convention against Torture.

9. An independent judiciary, as defined in international instruments, is so important for ensuring the objectives of the Convention against Torture that the Committee recommends that appropriate measures be taken to ensure the autonomy/independence of the judiciary in China."

Mr. NG Jianmin (China) said that he had listened carefully to the conclusions of the Committee and regretted that, in the section entitled "Subjects of concern", it had relied on information provided by non-governmental organizations (NGOs). Some NGOs were biased, since they drew their information from so-called "dissidents" who made their living out of accusing and blaming China. If the conclusions of the Committee were based on misinformation, they could not be considered objective. He would convey the Committee's recommendations to his Government.

4. The CHAIRMAN, having noted the remarks of the representative of China said that the conclusions of the Committee drew attention to favourable developments in China as well as to information and allegations it had received from non-governmental sources. He thanked the members of the delegation of China for the spirit of frank cooperation in which the dialogue had been conducted.

5. The delegation of China withdrew.

The meeting was suspended at 3.25 p.m. and resumed at 3.35 p.m.

Initial report of Croatia (continued) (CAT/C/16/Add.6; HRI/CORE/1/Add.42)

6. At the invitation of the Chairman, the delegation of Croatia took places at the Committee table.

7. Mr. KRAPAC (Croatia) said that his Government was well aware of the distinction between law and practice. The report provided a fair account of how the terms of the Convention were reflected in Croatian legislation, while at the same time attempting to describe the difficulties that his country had experienced in achieving their implementation.

8. There were three considerations that must be borne in mind: first of all, as in all former socialist States that had undergone decades of authoritarian rule, old habits ran deep and the protection of individual rights often ranked lower than other social measures. Secondly, Croatia had experienced greater problems in its transition to democracy than any other former socialist State, because of the war that had been fought on its soil. That war had brought about profound changes in the public administration; many of Croatia's officials, who were young and newly employed, had to be educated in their duties and responsibilities toward citizens. Thirdly, apart from the war situation, there were no signs that torture - to cite the worst form of ill-treatment - was systematically practised in Croatia. As his Government well understood, the protection of human rights required not only legislation but adherence by its citizens to the rule of law.

9. Croatian law did not, in fact, identify torture per se as a crime. It did, however, recognize as crimes all of the aspects of torture covered by the Convention. For example, aggravated forms of murder, which carried far more severe penalties than simple murder, encompassed aspects of the definition of torture set out in the Convention. He agreed that serious consideration should be given to enacting a crime of torture per se, and would put the suggestion to the committee that was currently in the process of rewriting Croatian criminal law.

10. In January 1996 the President of Croatia had announced that three presidential decrees would be repealed during the current year; it thus appeared that presidential decrees would soon cease to be an issue. In any event, his delegation would provide further information on the matter to the Committee at a later stage.

11. A provision of the Code of Criminal Procedure stipulated that a person whose legal rights and freedoms had been breached could himself institute proceedings against the alleged perpetrator, with full prosecutorial powers, including the right to be assisted by counsel (in certain cases at the public expense). He must first, however, submit his complaint to the Ministry of Justice, and attempt to settle out of court. The awarding of compensation was mainly within the purview of the courts.

12. Croatia had adopted a system of administrative courts modelled on those of Austria and Germany. The relevant law contained a special provision which, in some ways, resembled habeas corpus: if an individual considered that an

action by the executive had violated his rights, he could complain to an administrative court, but only after the executive had rendered a final decision and if no other judicial remedy existed.

13. The defence of superior orders as a justification for torture did not exist. Under the by-laws that regulated proceedings, any police or army officer receiving an order he thought unconstitutional must request that the order be given in writing. A subordinate who subsequently obeyed such a written order was held criminally responsible for his act.

14. Under the Code of Criminal Procedure, a person could be arrested only on well-founded suspicion of having committed an offence. In addition, grounds for detention such as risk to life, obliteration of evidence or risk of recidivism must exist. The arrested person must, in every case, be brought promptly before an investigating judge, who informed the suspect of the charges against him and his right to a defence counsel. The findings of the judge's formal interrogation were acceptable as evidence but those of informal police inquiries were not. Thus no evidence obtained through police ill-treatment or torture could be used as evidence. The victim could report such behaviour to the public prosecutor, who was obliged to prosecute if there was a well-founded suspicion of police wrongdoing.

15. If the public prosecutor did not act, the victim had the option of initiating an action. Such actions, which tarnished the image of the public prosecutor concerned, were initiated in about 2 per cent of all cases.

16. Croatia was the only State of the former Yugoslavia to have extradited one of its citizens to appear before the International Criminal Tribunal for the Former Yugoslavia in The Hague. The Croatian Parliament had just passed a constitutional act on cooperation by the Republic of Croatia with the Tribunal.

17. Mr. SOČANEC (Croatia), replying to questions by Mr. Pikis and Mr. Regmi, said that his Government had not had access to the United Nations Protected Areas (UNPAs) until August 1995 and could not be held responsible for events in those territories between 1991 and August 1995. During the liberation of the territories in August 1995, the police force and army units had respected international humanitarian law. The Government deeply regretted the criminal acts committed after the operation by a number of individuals or groups outside the control of the authorities. The regular and military courts were currently trying 1,005 persons (868 Croats, 39 Serbs and 98 members of other ethnic groups) for such acts.

18. There had been no further cases of arson since October 1995 and the human rights situation in general had been improving, as evidenced by the Secretary-General's report on Croatia to the Security Council (S/1996/109) of 14 February 1996.

19. Mr. NAD (Croatia), replying to a question by Mrs. Iliopoulos-Strangas, said that Croatia had accommodated over 380,000 refugees in the last five years. When refugees from Bosnia and Herzegovina accommodated in

United Nations Protected Areas left to receive medical treatment or for other reasons, the Government had been unable to admit permanently the large numbers involved and 1,149 persons had had to be sent back to the UNPA areas.

20. Mr. LOVRIĆ (Croatia) said that military courts, which had been set up in Croatia in December 1991 by a presidential decree, came under the supervision of the Ministry of Justice and the judges were not military personnel but experienced members of the judiciary. They were thus not military courts in the traditional sense of the term and appeals lay to the regular civil courts. The Government had recently taken steps to abolish the military courts.

21. Mr. NAD (Croatia) said that tear gas had been used by the police on three occasions to restore law and order at football matches. Nobody had suffered bodily injuries.

22. Mr. VEIĆ (Croatia) said that the judges of the disciplinary court that investigated police conduct in Croatia were appointed by the Minister of Internal Affairs. Convicted police officers could appeal to a superior court. A police code of ethics was being prepared and would help to enhance awareness of human rights.

23. Mr. HENISBERG (Croatia) said that the provision of treatment for victims of torture was a key health-care problem in Croatia. Over 6,600 formerly detained persons and a considerable number of displaced persons and refugees had suffered physical or mental injuries of varying degrees of severity.

24. Like other health-care personnel, medical personnel working in prisons were required to respect medical ethics. Prisoners requiring special treatment were referred to the appropriate specialized institutions, where they were treated without discrimination. They included persons with mental disorders acquired under torture during the period of Serb aggression, who were transferred to psychiatric institutions.

25. Special training for physicians in caring for torture victims was provided mainly at the undergraduate level. The disaster medicine course covered psychosocial and psychiatric support for victims of torture and rehabilitation. Medical students also received training in human rights. Financial and other assistance from the international community would be welcome to help enhance such activities and establish special rehabilitation centres for victims of torture.

26. Ms. MEŠTROVIĆ (Croatia) said, in answer to a question by Mr. Regmi, that the Constitutional Court had jurisdiction over the activities and programmes of political parties. A party could be banned if it threatened by violent means the constitutional order or territorial integrity of Croatia. No party had so far been banned. About 60 parties were registered with the Ministry of Public Administration and only one application for registration had been refused. That case was currently before the Administrative Court.

27. Mr. KRAPAC (Croatia) said he agreed with Mr. Sorensen that an arrested person had four fundamental rights. Such a person had to be brought promptly before the investigating judge whose duty it was to inform the person of those rights. The Code of Criminal Procedure provided that an arrested person could

request that his or her relatives or friends be informed of the detention. The relevant provision did not explicitly say that persons in custody must have access to a telephone, but that was implicit in the provision.

28. The court would appoint a defence counsel ex officio, if someone was involved in a complicated case or serious crime and was unable to pay for a lawyer and, in other cases an application could be made to the court for the appointment of counsel. In practice, the courts were normally fairly receptive to such requests.

29. The three-day deadline for submitting a complaint of ill-treatment to the public prosecutor could be extended if the person concerned had been badly injured and was in hospital, for example. If a complaint was lodged, the public prosecutor was obliged to initiate action.

30. As far as the exclusion of evidence was concerned, he had already pointed out that a statement extorted by torture was inadmissible as evidence in a trial and had to be removed from the case file. That was an effective way of ensuring that the judges could not be influenced by information obtained through torture.

31. The death penalty had been abolished in Croatia in 1989 and had not been reinstated, even during the war. Moreover, Croatia had adhered to the Optional Protocol.

32. The eight or nine restrictions on criminal proceedings introduced by presidential decree did not relate to the subject-matter of concern to the Committee and were designed merely to expedite fully fledged proceedings and to widen judges' competence in criminal cases. The fundamental right of defence was not restricted in summary proceedings. The only difference was that no extensive judicial investigation was conducted before the trial. At the appeal stage, the parties no longer had to appear in court and the court could rule on the case in camera.

33. The principle of aut dedere, aut punire, or rather aut dedere, aut judicare, did exist both in the extradition agreements Croatia had signed and in Croatian domestic law.

34. Mr. NAD (Croatia) said that, in 1995, 62,000 crimes had been recorded, including 213 murders. The solution rate for murders was 94 per cent. Some cases were still being investigated and the files would not be closed until the guilty parties had been captured. Croatia was open to visits from international organizations and was grateful for international assistance in apprehending war criminals.

35. Mr. YAKOVLEV asked whether it was true that the disciplinary court was part of the hierarchical structure of the Ministry of Internal Affairs and whether a person could lodge a complaint of unlawful arrest with the investigating judge.

36. Mr. VEIC (Croatia) said that the disciplinary court and criminal court were separate entities. If a police officer exceeded his authority, he had to answer to a disciplinary court, but his criminal liability would be the

subject of separate proceedings before a criminal court. It was thus possible for a disciplinary court to dismiss a police officer who would subsequently have to be tried by a criminal court. Although the disciplinary court was a police body, its judges were appointed by the Minister of the Interior and were trained lawyers.

37. Mr. KRAPAC (Croatia) said that a victim of police ill-treatment could lodge a complaint with the public prosecutor or investigating judge. If the investigating judge received such an allegation, he was obliged to have the victim examined by a doctor and to send a report to the public prosecutor who had to decide whether there were grounds for suspecting that a criminal offence had been committed.

38. Mrs. ILIOPOULOS-STRANGAS said that she would like to know whether Croatia had specific legislation applicable to aliens and, if so, whether such legislation was in keeping with article 3 of the Convention. She asked whether the cases of persons who had been expelled had been dealt with individually and whether the requirements of article 3 had been met.

39. Mr. MAD (Croatia) said that Croatia did have an aliens law, according to which the case of every alien who was unlawfully present in Croatian territory, or who broke the law, was heard and decided individually by the relevant court.

40. Mr. CAMARA asked whether the offence of incitement existed in Croatian law.

41. Mr. KRAPAC (Croatia) said that the Penal Code provided that any person guilty of incitement to commit an offence was punishable as if he had committed it himself. Similarly anyone who deliberately aided and abetted the commission of an offence was also punishable as if he himself had committed it.

The public part of the meeting was suspended at 5.10 p.m. and resumed at 5.45 p.m.

42. Mr. BURNS (Alternate Country Rapporteur) read out the conclusions and recommendations of the Committee on the initial report of Croatia:

"Conclusions and recommendations of the Committee against Torture

CROATIA

The Committee considered the initial report of Croatia (CAT/C/16/Add.6) and its 253rd and 254th meetings on 6 May 1996 (see CAT/C/SR.253 and 254) and adopted the following conclusions and recommendations.

A. Introduction

The initial report of Croatia, dated 29 January 1996, was due on 7 October 1992 but the events of insecurity in Croatia from 1991 explain why this report is late. This initial report and the core report on

Croatia follow the Committee's guidelines and meet them satisfactorily. The Committee thanks the delegation of Croatia for its introductory remarks.

B. Positive aspects

The constitutional and other legal safeguards against torture and cruel or unusual treatment or punishment are particularly well-developed in Croatia.

The commitment of Croatia to all international human rights is reflected in the country's accession to the various human rights treaties. It is particularly noteworthy that Croatia has not expressed any reservations concerning article 20 and has made declarations under articles 21 and 22 of the Convention against Torture.

The Croatian Government has undertaken investigation and prosecution in cases of alleged torture and ill-treatment arising out of the events of 1995 and its aftermath.

The support of Croatia for the rehabilitation of the victims of violence that took place in the country between 1991 and the end of 1995.

C. Factors and difficulties impeding implementation

The situation of insecurity and loss of civil oversight over parts of Croatia between 1991 and the end of 1995.

The social and economic consequences of the events referred to in section A, together with the costs of reconstruction and reintegration of large portions of the population into the wider society.

The refocusing of social attitudes on to human rights rather than on to State rights, in a country where for 45 years the opposite was the norm.

D. Subjects of concern

Information of serious breaches of the Convention from reliable non-governmental organizations indicates that, in the wake of the events of 1995, serious acts of torture were perpetrated by Croatian officials, particularly against the Serb minority. There is no defined crime of torture in the domestic law of Croatia.

E. Recommendations

That Croatia enact a crime of torture in terms consistent with article 1 of the Convention against Torture.

That Croatia ensure that all allegations of torture or cruel or unusual treatment or punishment arising out of the events of 1995 and its aftermath be vigorously investigated by an impartial, independent commission, and that the results of such investigation be reported back to this Committee.

That a vigorous programme of education of police, prison, medical, prosecution and judicial personnel be undertaken to ensure that they understand their obligations pursuant to the relationship between the domestic law of Croatia and the international human rights regime that Croatia has acceded to.

The Committee urges Croatia to continue to cooperate with the War Crimes Tribunal for the Former Yugoslavia to ensure that alleged war criminals within its jurisdiction are brought to justice, pursuant to the Dayton Peace Accord.

Individual claims of violations of the constitutional rights of defendants in pre-trial detention should be justiciable by an effective judicial authority.

That, in the second periodic report, a detailed account of the way in which Croatia complies with the provisions of article 3 of the Convention against Torture be included.

That Croatia's police and judicial authorities pay special attention to the implementation of the existing legal guarantees of a constitutional and procedural nature."

43. Mr. NAD (Croatia) said he hoped that the members of the Committee would understand that Croatia was a young country and was currently in the process of drafting legislation to regulate all the matters that had been mentioned.

44. His delegation fully accepted the Committee's conclusions and recommendations, and replies to them would be included in the second periodic report of Croatia.

45. The CHAIRMAN, having thanked the representative of Croatia for his statement, said that the Committee's role was not to accuse or reprimand the States parties but to help ensure that the Convention was implemented. It was essential that all the obligations assumed under the Convention were honoured.

The meeting rose at 6.05 p.m.